

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 THOMAS SIKES,) Case No. ED CV 14-0849-PJW
11 Plaintiff,)
12 v.) MEMORANDUM OPINION AND ORDER
13 CAROLYN W. COLVIN,)
14 Acting Commissioner of the)
Social Security Administration,)
15 Defendant.)
16 _____)

17 I. INTRODUCTION

18 Plaintiff appeals a decision by Defendant Social Security
19 Administration ("the Agency"), denying his application for
20 Supplemental Security Income ("SSI"). He claims that the
21 Administrative Law Judge ("ALJ") erred when she failed to consider the
22 opinion of a treating physician and when she discounted Plaintiff's
23 testimony. For the following reasons, the Court affirms the ALJ's
24 decision.

25 II. SUMMARY OF PROCEEDINGS

26 In May 2008, Plaintiff applied for SSI, alleging that he had been
27 disabled since June 2007, due to severe back and leg pain and
28 degenerative joint disease. (Administrative Record ("AR") 305-13,

1 330.) His application was denied initially and on reconsideration and
 2 he requested and was granted a hearing before an ALJ. In November
 3 2009, he appeared with counsel and testified at the hearing. (AR 86-
 4 125.) In January 2010, the ALJ issued a decision denying benefits.
 5 (AR 128-36.) Plaintiff then sought review by the Appeals Counsel,
 6 which granted his request and remanded the case with instructions to
 7 obtain additional vocational evidence. (AR 141-42.)

8 On remand, the same ALJ held a new hearing in February 2011 and
 9 issued a second decision, also concluding that Plaintiff was not
 10 disabled. (AR 49-85, 143-50.) Plaintiff appealed to the Appeals
 11 Council, which again granted review and remanded the case for
 12 supplemental vocational evidence. (AR 154-56.)

13 On December 17 2012, a different ALJ held a hearing. (AR 23-48.)
 14 On March 18, 2013, she issued a decision denying benefits. (AR 6-16.)
 15 Plaintiff appealed to the Appeals Council, which denied review. (AR
 16 1-5.) Thereafter, he filed the instant action.

17 III. ANALYSIS

18 A. The ALJ's Finding that Plaintiff was not Credible

19 At the December 2012 administrative hearing, Plaintiff testified
 20 that he is in such pain that he could walk barely a block before
 21 having to stop and rest for 30 minutes and could shop for groceries
 22 only if an electric cart was available. (AR 31-32, 35-36.) He also
 23 testified that he had difficulty climbing up a three- or four-inch
 24 step at his house. (AR 33.) Plaintiff complained that his
 25 prescription medication affected his memory, coordination, and mood,
 26 making him angry at times. (AR 33-34.)

27 The ALJ discounted this testimony because she found that these
 28 impairments had not caused him to stop working, he made inconsistent

1 statements about his illegal drug use, and his allegations of pain and
2 limitation were inconsistent with the objective medical evidence. (AR
3 12.) Plaintiff argues that the ALJ erred in doing so. For the
4 following reasons, the Court affirms the ALJ's credibility
5 determination.

6 ALJs are tasked with judging a claimant's credibility. *Andrews*
7 *v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). In doing so, they can
8 rely on ordinary credibility techniques. *Smolen v. Chater*, 80 F.3d
9 1273, 1284 (9th Cir. 1996). Where there is no evidence of
10 malingering, however, ALJs can only reject a claimant's testimony for
11 specific, clear, and convincing reasons that are supported by
12 substantial evidence in the record. *Garrison v. Colvin*, 759 F.3d 995,
13 1014-15 (9th Cir. 2014).

14 The ALJ's first reason for rejecting Plaintiff's testimony--that
15 Plaintiff had not stopped working as a result of his pain--is
16 specific, clear, and convincing and is supported by substantial
17 evidence in the record. Plaintiff testified at the November 2009
18 hearing that he quit his photocopier repair job in 2007 because he had
19 a difference of opinion with the manager. (AR 89-92.) At the
20 February 2011 hearing, he claimed that he was laid off from that job.
21 (AR 54.) The inconsistent answers aside, the ALJ was entitled to rely
22 on the fact that Plaintiff stopped working for reasons other than
23 being disabled as a basis for questioning Plaintiff's testimony that
24 his impairments precluded him from working. See *Hensley v. Colvin*,
25 600 Fed App'x 526, 527 (9th Cir. 2015) (upholding ALJ's finding that
26 claimant's testimony that she could not work was undermined by the
27 fact that she stopped working by choice, not because she was unable to
28 continue); and *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001)

1 (affirming ALJ's adverse credibility finding based in part on fact
2 that claimant left his job because he was laid off, not because he
3 could no longer work).

4 The ALJ also questioned Plaintiff's testimony because she
5 believed that he had made inconsistent statements about his drug use.
6 Although inconsistencies in a claimant's testimony are a legitimate
7 reason for discounting the testimony, this finding is not supported by
8 substantial evidence in the record.

9 At the November 2009 hearing, the ALJ asked Plaintiff, "any drugs
10 or alcohol in the last several years?" The transcript does not record
11 any response from Plaintiff, but the ALJ evidently accepted his answer
12 was no. (AR 92.) Later in the hearing, Plaintiff testified again
13 that he did not do drugs, but acknowledged that he had used drugs in
14 the past, which was why he had been in prison. (AR 114.) He said
15 that he had used methamphetamine "pretty regularly back then," but had
16 not done so since being released in 2007. (AR 114-15.)

17 At the February 2011 hearing, the same ALJ asked Plaintiff, "use
18 any drugs or alcohol?", to which Plaintiff replied no. (AR 55.) At
19 the December 2012 hearing, the new ALJ did not ask Plaintiff whether
20 he had ever used drugs.

21 Based on this record, the Court is unable to conclude that
22 Plaintiff's answers concerning his drug use were inconsistent or
23 untrue. To the contrary, Plaintiff consistently responded that he had
24 used drugs in the past, but had not used them since 2007. Thus, this
25 reason for questioning Plaintiff's testimony is rejected.

26 Finally, the ALJ found that Plaintiff's allegations were not
27 supported by the medical records, pointing out that the results of a
28 consultative examination performed in January 2013 undermined his

1 claims of severe limitations. (AR 12.) This is a valid reason for
2 questioning a claimant's testimony, *see, e.g., Osenbrock v. Apfel*, 240
3 F.3d 1157, 1165-66 (9th Cir. 2001) (upholding ALJ's credibility
4 determination in part because medical evaluations revealed little
5 evidence of disabling abnormality alleged by claimant), and it is
6 supported by substantial evidence.

7 On January 21, 2013, consulting orthopedic surgeon Vicente
8 Bernabe reviewed medical records and examined Plaintiff. (AR 535-39,
9 541.) Dr. Bernabe noted that Plaintiff did not appear to be in any
10 distress and "moved freely in and out of the office and around the
11 examination room" with the help of a cane, although Dr. Bernabe
12 determined that the cane was not medically necessary. (AR 535-37.)
13 Although he noted some tenderness in Plaintiff's lumbar spine and
14 observed that X-rays showed mild to moderate narrowing of the L5-S1
15 disc space, Dr. Bernabe's examination results were otherwise
16 unremarkable. (AR 537-38.)

17 The ALJ was entitled to contrast the orthopedic surgeon's
18 findings that Plaintiff appeared to move without pain and his
19 impairments were relatively minor with Plaintiff's testimony one month
20 earlier that he could not walk more than a block or climb a four-inch
21 step and use the discrepancy as a basis for finding him less than
22 credible.

23 In the end, the Court accepts two of the reasons offered by the
24 ALJ for questioning Plaintiff's testimony and rejects one. The Court
25 further finds that the ALJ's error regarding Plaintiff's statements
26 about his drug use does not undermine her overall credibility
27 determination and, therefore, it is affirmed. *See Carmickle v.*
28 *Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (holding

1 error by ALJ in credibility determination is harmless "[s]o long as
2 there remains substantial evidence supporting the ALJ's conclusions .
3 . . and the error does not negate the validity of the ALJ's"
4 determination.").

5 B. The Treating Opinion

6 Plaintiff contends that the ALJ erred by rejecting the opinion of
7 his primary treating physician David Lanum. For the following
8 reasons, the Court finds that the ALJ did not err.

9 It is the province of the ALJ to resolve conflicts in the medical
10 evidence. *Andrews*, 53 F.3d at 1039. Generally speaking, three types
11 of doctors supply that evidence: treating doctors, examining doctors,
12 and reviewing doctors. All other things being equal, treating
13 doctors' opinions are entitled to the greatest weight because they are
14 hired to cure and have more opportunity to know and observe the
15 patient. *Id.* at 1041; see also 20 C.F.R. 416.927(d)(2) ("Generally,
16 we give more weight to opinions from your treating sources, since
17 these sources are likely to be the medical professionals most able to
18 provide a detailed, longitudinal picture of your medical impairment(s)
19 and may bring a unique perspective to the medical evidence that cannot
20 be obtained from the objective medical findings alone or from reports
21 of individual examinations"). Examining doctors are next on the list,
22 followed by reviewing doctors. See *Lester v. Chater*, 81 F.3d 821,
23 830-31 (9th Cir. 1995). ALJs, however, are not required to merely
24 accept the opinion of any doctor and, where the opinion is
25 contradicted, may reject it for specific and legitimate reasons that
26 are supported by substantial evidence in the record. *Id.* at 830.

27 In a July 2, 2010 report, Dr. Lanum assessed Plaintiff with
28 chronic low back pain that required ongoing medication for pain

1 management, a history of chest pain, and chronic active hepatitis C.
2 He concluded that Plaintiff "should be considered disabled at this
3 time." (AR 522.) The ALJ rejected this opinion, relying instead on
4 the January 2013 opinion of examining surgeon Bernabe and the opinions
5 of the state agency reviewing doctors, all of whom found that
6 Plaintiff could perform at least light work. (AR 13-14, 449-53, 469-
7 70, 539.) The ALJ cited three reasons for rejecting Dr. Lanum's
8 opinion: (1) it was not supported by objective clinical findings;
9 (2) it was a blanket conclusion; and (3) Dr. Lanum appeared simply to
10 be adopting Plaintiff's subjective complaints. (AR 13.) These are
11 specific and legitimate reasons for rejecting Dr. Lanum's July 2010
12 opinion. See, e.g., *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
13 1190, 1195 (9th Cir. 2004) (holding ALJ may discount treating opinion
14 that is conclusory, brief, and unsupported by record as a whole);
15 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (holding ALJ
16 may rejecting treating opinion that is based on claimant's self
17 reports that have properly been discounted). And they are supported
18 by substantial evidence in the record.

19 Dr. Lanum's July 2010 conclusion that Plaintiff was disabled is
20 not supported by his treatment notes, which reflect that Plaintiff's
21 symptoms were generally unremarkable and controlled by his
22 medications. Dr. Lanum first treated Plaintiff in June 2008, at which
23 time he noted Plaintiff's complaints of chronic back pain and
24 diagnosed him with "mid effused degenerative disc disease," with some
25 bilateral neural foraminal stenosis. (AR 391-92.) At a follow-up in
26 July 2008, Dr. Lanum again noted Plaintiff's complaints of back pain,
27 which he found to be consistent with an MRI of the lumbar spine that
28 showed stenosis. (AR 468.) In October 2008, after Plaintiff

1 complained that Norco alone was not controlling his back pain, Dr.
2 Lanum prescribed Piroxicam. (AR 516.) In March 2009, Plaintiff
3 reported that the Piroxicam had helped but complained that his
4 hepatitis C medication was causing flu-type symptoms and fatigue and
5 he had developed a rash. (AR 500.) In May 2009, Plaintiff reported
6 that his current medications were "doing well for his pain control,"
7 though the fatigue and flu symptoms were persisting. (AR 490.) In
8 July 2009, Plaintiff reported a brief episode of chest pain, but
9 denied any other acute symptoms. (AR 485.) Plaintiff had follow-up
10 visits in December 2009 and February 2010, at which time he complained
11 of continued back pain, but Dr. Lanum merely refilled his
12 prescriptions, noting that there was "no real trauma." (AR 525.) In
13 March 2010, Dr. Lanum reviewed X-rays of Plaintiff's thoracic spine
14 and hips, which were "essentially unremarkable." (AR 524.) These
15 treatment notes taken as a whole do not support his July 2010
16 conclusion that Plaintiff was disabled.

17 Furthermore, at no time did Dr. Lanum indicate what, if any,
18 functional limitations Plaintiff might have as a result of his back
19 pain and hepatitis C. None of his treatment notes remotely suggested
20 that Plaintiff was in such pain that he was not able to walk a block
21 or more, or climb up steps, as Plaintiff alleged in 2012.

22 The ALJ was not required to accept Dr. Lanum's conclusion that
23 Plaintiff was disabled. See *Batson*, 359 F.3d at 1195 (holding
24 treating physician's determination of disability is not binding on an
25 ALJ). This is particularly true where, as here, Dr. Lanum's opinion
26 appeared to be based in large measure on Plaintiff's subjective
27 complaints--which the ALJ rejected--and it was contradicted by Dr.
28 Bernabe's examination findings. Because the ALJ provided specific and

1 legitimate reasons for rejecting Dr. Lanum's controverted opinion, the
2 Court affirms her decision.

IV. CONCLUSION

For these reasons, the ALJ's decision is affirmed and the case is dismissed with prejudice.

IT IS SO ORDERED.

DATED: August 21, 2015.

Patrick J. Walsh

PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE

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